

## § 405.808

request by the party affected, extend the period for requesting the review.

(d) *Request for review.* Any clear expression in writing by a party to an initial determination which indicates, in effect, that he is dissatisfied with such determination by the carrier and wants to appeal the matter further constitutes a request for review.

[39 FR 12097, Apr. 3, 1974. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 62 FR 25855, May 12, 1997]

### § 405.808 Parties to the review.

The parties to the review (as provided for in § 405.807(a)) shall be the persons who were parties to the carrier's initial determination as described in § 405.805, and any other party whose rights with respect to the particular claim being reviewed may be affected by such review.

[39 FR 12097, Apr. 3, 1974. Redesignated at 42 FR 52826, Sept. 30, 1977]

### § 405.809 Opportunity to submit evidence.

The parties to the review (as provided for in § 405.807(a)) shall have a reasonable opportunity to submit written evidence and contentions as to fact or law relative to the claim at issue.

[39 FR 12097, Apr. 3, 1974. Redesignated at 42 FR 52826, Sept. 30, 1977]

### § 405.810 Review determination.

Subject to the provisions of §§ 405.807 through 405.809, the carrier shall review the claim in dispute and, upon the basis of the evidence of record, shall make a separate determination affirming or revising in whole or in part the findings and determination in question.

[39 FR 12097, Apr. 3, 1974. Redesignated at 42 FR 52826, Sept. 30, 1977]

### § 405.811 Notice of review determination.

Written notice of the review determination is mailed to a party at his or her last known address. The review determination states the basis of the determination and advises the party of his or her right to a carrier hearing when the amount in controversy is \$100 or more as determined in accordance with § 405.817. The notice states the place and manner of requesting a carrier hearing as well as the time limit

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under which a hearing must be requested (see § 405.821).

[59 FR 12182, Mar. 16, 1994]

### § 405.812 Effect of review determination.

The review determination is binding upon all parties to the review unless a carrier hearing decision is issued pursuant to a request for hearing made in accordance with § 405.821 or is revised as a result of reopening in accordance with § 405.841.

[59 FR 12182, Mar. 16, 1994, as amended at 62 FR 25855, May 12, 1997]

### § 405.815 Amount in controversy for carrier hearing, ALJ hearing and judicial review.

Any party designated in § 405.822 is entitled to a carrier hearing after a review determination has been made by the carrier if the amount remaining in controversy is \$100 or more and the party meets the requirements of § 405.821 of this subpart. To be entitled to a hearing before an ALJ following the carrier hearing, the amount remaining in controversy must be \$500 or more, and for judicial review following the ALJ hearing and Departmental Appeals Board Review, the amount remaining in controversy must be \$1000 or more.

[59 FR 12182, Mar. 16, 1994, as amended at 61 FR 32348, June 24, 1996]

### § 405.817 Principles for determining amount in controversy.

(a) *Individual appellants.* For the purpose of determining whether an individual appellant meets the minimum amount in controversy needed for a carrier hearing (\$100) or ALJ hearing (\$500), the following rules apply:

(1) The amount in controversy is computed as the actual amount charged the individual for the items and services in question, less any amount for which payment has been made by the carrier and less any deductible and coinsurance amounts applicable in the particular case.

(2) A single beneficiary may aggregate claims from two or more physicians/suppliers to meet the \$100 or \$500 thresholds. A single physician/supplier may aggregate claims from two or

more beneficiaries to meet the \$100 or \$500 threshold levels of appeal.

(3) In either of the circumstances specified in paragraph (a)(2) of this section, two or more claims may be aggregated by an individual appellant to meet the amount in controversy for a carrier hearing only if the claims have previously been reviewed and a request for hearing has been made within six months after the date of the review determination(s).

(4) In either of the circumstances specified in paragraph (a)(2) of this section, two or more claims may be aggregated by an individual appellant to meet the amount in controversy for an ALJ hearing only if the claims have previously been decided by a carrier hearing officer and a request for an ALJ hearing has been made within 60 days after receipt of the carrier hearing officer decision(s).

(5) When requesting a carrier hearing or an ALJ hearing, the appellant must specify in his or her appeal request the specific claims to be aggregated.

(b) *Two or more appellants.* As specified in this paragraph, under section 1869(b)(2) of the Act, two or more appellants may aggregate their claims together to meet the minimum amount in controversy needed for an ALJ hearing (\$500). The right to aggregate under this statutory provision applies to claims for items and services furnished on or after January 1, 1987.

(1) The aggregate amount in controversy is computed as the actual amount charged the individual(s) for the items and services in question, less any amount for which payment has been made by the carrier and less any deductible and coinsurance amounts applicable in the particular case.

(2) In determining the amount in controversy, two or more appellants may aggregate their claims together under the following circumstances:

(i) Two or more beneficiaries may combine claims representing services from the same or different physician(s) or supplier(s) if the claims involve common issues of law and fact;

(ii) Two or more physicians/suppliers may combine their claims if the claims involve the delivery of similar or related services to the same beneficiary;

(iii) Two or more physicians/suppliers may combine their claims if the claims involve common issues of law and fact with respect to services furnished to two or more beneficiaries.

(iv) In any of the circumstances specified in paragraphs (b)(2)(i) through (b)(2)(iii) of this section, the claims may be aggregated only if the claims have previously been decided by a carrier hearing officer(s) and a request for ALJ hearing has been made within 60 days after receipt of the carrier hearing officer decision(s). Moreover, in a request for ALJ hearing, the appellants must specify the claims that they seek to aggregate.

(c) The determination as to whether the amount in controversy is \$100 or more is made by the carrier hearing officer. The determination as to whether the amount in controversy is \$500 or more is made by the ALJ.

(d) In determining the amount in controversy under paragraph (b) of this section, the ALJ will also make the determination as to what constitutes "similar or related services" or "common issues of law and fact."

(e) When a civil action is filed by either an individual appellant or two or more appellants, the Secretary may assert that the aggregation principles contained in this subpart may be applied to determine the amount in controversy for judicial review (\$1000).

(f) Notwithstanding the provisions of paragraphs (a)(1) and (b)(1) of this section, when payment is made for certain excluded services under § 411.400 of this chapter or the liability of the beneficiary for those services is limited under § 411.402 of this chapter, the amount in controversy is computed as the amount that would have been charged the beneficiary for the items or services in question, less any deductible and coinsurance amounts applicable in the particular case, had such expenses not been paid under § 411.400 of this chapter or had such liability not been limited under § 411.402 of this chapter.

(g) Under this subpart, an appellant may not combine part A and part B claims together to meet the requisite amount in controversy for a carrier hearing or ALJ hearing. HMO, CMP and HCPP appellants under part 417 of

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this chapter may combine part A and part B claims together to meet the requisite amount in controversy for a hearing.

[59 FR 12182, Mar. 16, 1994]

### § 405.821 Request for carrier hearing.

(a) A request for a carrier hearing is any clear expression in writing by a claimant asking for a hearing to adjudicate a claim when not acted upon with reasonable promptness or by a party to a review determination who states, in effect, that he or she is dissatisfied with the carrier's review determination and wants further opportunity to appeal the matter to the carrier.

(b) The hearing request must be filed at an office of the carrier or at an office of SSA or HCFA.

(c) Except when a carrier hearing is held because the carrier did not act upon a claim with reasonable promptness, a party to the review determination may request a carrier hearing within six months after the date of the notice of the review determination. The carrier may, upon request by the party affected, extend the period for filing the request for hearing.

[59 FR 12183, Mar. 16, 1994, as amended at 62 FR 25855, May 12, 1997]

### § 405.822 Parties to a carrier hearing.

The parties to a hearing shall be the persons who were parties to the carrier's review determination (§ 405.808) which is in question. Any other person may be made a party if that person's rights with respect to supplementary medical insurance benefits may be prejudiced by the decision.

[39 FR 12097, Apr. 3, 1974. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 59 FR 12183, Mar. 16, 1994]

### § 405.823 Carrier hearing officer.

Any hearing provided for in this subpart shall be conducted by a hearing officer designated by the appropriate official of the carrier.

[39 FR 12097, Apr. 3, 1974. Redesignated at 42 FR 52826, Sept. 30, 1977, and amended at 59 FR 12183, Mar. 16, 1994]

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### § 405.824 Disqualification of carrier hearing officer.

A hearing officer shall not conduct a hearing in any case in which he is prejudiced or partial with respect to any party, or if he has any interest in the matter before him. Notice of any objection with respect to the hearing officer who will conduct the hearing shall be made by the objecting party at his earliest opportunity. The hearing officer shall consider such objection and shall, at his discretion, withdraw. If the hearing officer withdraws, the appropriate official of the carrier shall designate another hearing officer to conduct the hearing. If the hearing officer does not withdraw, the objecting party may present his objections to the carrier for consideration at any time prior to the issuance of a decision. The carrier shall review the request and take appropriate action. The fact that a hearing officer is an employee of the carrier may not serve as prima facie cause for disqualification.

[32 FR 18028, Dec. 16, 1967. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 59 FR 12183, Mar. 16, 1994]

### § 405.825 Location of carrier hearing.

(a) *Time and place.* The hearing officer shall fix a time and place for the hearing reasonably convenient to the requesting party and not inconsistent with the public interest.

(b) *Adjournment or postponement.* The hearing officer may, for a good and sufficient reason, fix a new time and/or place for the hearing; he may change the time and place for the hearing or adjourn the hearing on his own motion upon reasonable notification to the parties.

[32 FR 18028, Dec. 16, 1967. Redesignated at 42 FR 52826, Sept. 30, 1977, as amended at 59 FR 12183, Mar. 16, 1994]

### § 405.826 Notice of carrier hearing.

The notice of hearing is to include notice of the time and place of the hearing; information as to the specific issues to be determined; and the matters on which findings will be made and conclusions will be reached. The notice is to contain sufficient information about the hearing procedure (including